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FIRST GENERAL COUNSEL'S REPORT

MUR: 6187

DATE COMPLAINT FILED: 05/01/09

DATE OF NOTIFICATION: 5/07/09

LAST RESPONSE RECEIVED: 5/29/09

DATE ACTIVATED: 6/10/09

STATUTE OF LIMITATIONS:

prospective complaint

COMPLAINANT:

Brian Melendez/Minnesota Democratic
Farmer Labor Party

RESPONDENTS:

Coleman for Senate '08 and Rodney Axtell,
in his official capacity as treasurer
Norm Coleman

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 439a
11 C.F.R. § 113.1(g)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that former Minnesota U.S. Senator Norm Coleman and his principal campaign committee, Coleman for Senate '08 and Rodney Axtell, in his official capacity as treasurer, ("the Committee") are improperly using campaign funds for personal use to pay for Coleman's legal fees stemming from a civil suit in Texas that alleges that financier Nasser Kazeminy funneled gifts totaling \$75,000 to Coleman through Kazeminy's company and the employer of Coleman's wife ("the Kazeminy lawsuit").

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1 In response, Norm Coleman asserted that the Commission should dismiss the
2 complaint because, contrary to the allegations, he and his Committee had, at the time of
3 the Response, not yet paid any of the legal fees arising from the need to monitor and
4 respond to the Kazeminy lawsuit. Coleman emphasized that he was seeking an Advisory
5 Opinion from the Commission as to whether he and his Committee could spend
6 campaign funds on these legal fees before paying any of the fees with campaign funds.
7 On June 25, 2009, the Commission issued Advisory Opinion 2009-12 (Coleman),
8 permitting Coleman and the Committee to use campaign funds for the purposes
9 requested. Following this Advisory Opinion, on July 13, 2009, in MUR 6154 involving
10 the same allegation as in the present matter, the Commission found no reason to believe
11 that Norm Coleman and the Committee violated the personal use prohibition.

12 Accordingly, we recommend that the Commission find no reason to believe that
13 Norm Coleman, Coleman for Senate '08, and Rodney Axtell, in his official capacity as
14 treasurer, converted campaign funds to personal use in violation of 2 U.S.C. § 439a(b)
15 and close the file.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17
18 **A. Factual Background**

19
20 On October 30, 2008, Paul McKim, the founder and CEO of Deep Marine
21 Technologies, Inc. ("DMT"), filed a lawsuit in Harris County, Texas, alleging, among
22 other things, that Nasser Kazeminy, an investor in DMT, had created a false consulting
23 agreement with Hays Insurance, a Minnesota insurance brokerage, in order to funnel
24 money to Senator Norm Coleman through his wife Laurie Coleman, a Hays employee.
25 See the Kazeminy lawsuit Original Petition, Complaint Attachment A. The Kazeminy

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1 lawsuit claims that Kazeminy told McKim and DMT's CFO that he wanted to "find a
2 way to get money to United States Senator Norm Coleman of Minnesota and wanted to
3 utilize DMT in the process," and that Kazeminy informed McKim that he "would make
4 sure there was paperwork to make it appear as though the payments were made in
5 connection with legitimate transactions ... the payments could be made to Hays for
6 insurance." *Id.* at 10-11. The Kazeminy lawsuit alleges that Kazeminy arranged for
7 Hays to draft a consulting agreement with DMT and coerced McKim into making three
8 of four planned \$25,000 payments to Hays, ostensibly in payment for services rendered,
9 but McKim asserts that Hays performed no services for DMT and was not licensed to
10 broker insurance in Texas. *Id.* at 11-12. A related shareholder's derivative suit was filed
11 in the Delaware Chancery Court on November 3, 2008, making similar allegations.
12 Coleman and his wife are not defendants in either lawsuit, but Coleman has issued press
13 releases to address the allegations, and he has hired attorneys to monitor the cases and to
14 prepare to respond.

15 Coleman's campaign asserted to the media that the allegations in the Kazeminy
16 lawsuit were baseless and politically motivated. Coleman's campaign manager Luke
17 Friedrich reportedly stated that "[w]e intend to have any legal fees related to what we
18 believe to be a politically inspired legal action to be covered by the senator's
19 campaign.... We will be seeking the necessary approvals at the proper time to ensure that
20 this is done in strict accordance with all appropriate laws and rules." Tony Kennedy and
21 Paul McEnroe, "Coleman Will Use Campaign Funds to Pay Legal Fees," *Minneapolis*
22 *Star Tribune*, first published December 18, 2008, Complaint Attachment E.

23 Coleman represented in his response dated May 29, 2009, that no campaign funds

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1 had been spent on the legal fees related to the Kazeminy lawsuit, but noted his Advisory
2 Opinion Request to the Commission seeking guidance as to whether he could spend
3 campaign funds on the legal fees at issue. Response at 1. On June 25, 2009, the
4 Commission rendered a response in AO 2009-12 (Coleman) approving the Committee's
5 use of campaign funds to pay the legal fees in question in this matter. Coleman
6 represented in AOR 2009-12 that he had hired the firm of Kelley & Wolter, a
7 Minneapolis law firm, to represent him in the Kazeminy lawsuit, and that the firm had
8 not yet been paid. See AOR at 1, fn. 1. The Committee's disclosure reports to the
9 Commission covering the period through June 30, 2009, disclosed no disbursements to
10 Kelley & Wolter.

11 **B. Legal Analysis**

12 The Federal Election Campaign Act of 1971, as amended, ("the Act") provides
13 that contributions accepted by a candidate may be used by the candidate for ordinary and
14 necessary expenses incurred in connection with duties of the individual as a Federal
15 office holder. 2 U.S.C. § 439a(a)(2). Such campaign funds, however, shall not be
16 converted to "personal use" by any person. 2 U.S.C. § 439a(b)(1).

17 In response to the Complaint's allegation that Coleman's use of campaign funds
18 for legal fees would constitute personal use and thus violate the Act, the response
19 emphasized that no campaign funds had been expended to pay for the legal services
20 referenced in the complaint, and that Coleman and the Committee were "seeking
21 confirmation that his principal campaign committee may pay for the costs outlined in the
22 request." Response at 1; see also AOR 2009-12 (Coleman). The Committee's disclosure
23 reports confirm that no campaign funds were so spent prior to the June 25, 2009, issuance

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1 of AO 2009-12 in which the Commission concluded that Coleman may use campaign
2 funds for the legal fees referenced in the complaint. Therefore, there has been no
3 conversion of campaign funds to personal use in violation of 2 U.S.C. § 439a(b)(1). See
4 MUR 6154 (Coleman) Factual and Legal Analysis.

5 Based on the foregoing, we recommend that the Commission find no reason to
6 believe that Norm Coleman, Coleman for Senate '08, and Rodney A. Axtell, in his
7 official capacity as treasurer, violated 2 U.S.C. § 439a(b) by converting campaign funds
8 to personal use, and close the file.

9 **III. RECOMMENDATIONS**

- 10 1. Find no reason to believe that Norm Coleman, Coleman for Senate '08
11 and Rodney A. Axtell, in his official capacity as treasurer, violated
12 2 U.S.C. § 439a(b).
13
14 2. Approve the attached Factual and Legal Analyses.
15
16 3. Approve the appropriate letters.
17
18 4. Close the file.
19

20 Thomasenia P. Duncan
21 General Counsel

22
23 9/2/09
24 _____
25 Date

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27 BY: 
28 Stephen Gura
29 Deputy Associate General Counsel
30 for Enforcement

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34 Mark Allen
35 Assistant General Counsel
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Audra Hale-Maddox
Attorney

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